LAKE COUNTY BOARD of ADJUSTMENT
June 13, 2012
Lake County Courthouse Large Conference Room (Rm 317)
Meeting Minutes

MEMBERS PRESENT: Sue Laverty, Mike Marchetti, Paul Grinde

STAFF PRESENT: Joel Nelson, LaDana Hintz, Lita Fonda

Mike Marchetti called the meeting to order at 4:02 pm.

Sue noted a correction in the April 11, 2012 minutes on pg. 3 in the second sentence of the second paragraph, where "Sue felt the all…" should read "Sue felt that all…."

Motion made by Sue Laverty, and seconded by Paul Grinde, to approve the April 11, 2012 meeting minutes as corrected. Vote unanimous to approve minutes.

WEISS VARIANCE—CITY-COUNTY

LaDana Hintz presented the staff report. (See attachments to minutes in the June 13, 2012 meeting file for staff report.)

Mike confirmed with LaDana that the slab had originally been on lot 3, and had become part of lot 4 after the boundary was redrawn. Sue clarified with LaDana that Dana Field was actually the owner of Lot 3A, on pg. 17, in the last paragraph of #11, and this was corrected accordingly. Regarding #12 on pg. 17, Paul asked if LaDana had received additional information from the applicant, and LaDana replied that she had not, as of yet. If the applicant wished to table the proposal, he could do so and submit more information.

Paul referred to #14 on pg. 18 and #18 on pg. 19, which talked about a sprinkler system to be installed. He referred also to #4 on pg. 14, which said plans had been submitted that indicated no water to the structure. LaDana said her understanding was that this was to be a dry facility that would not be hooked to water and sewer. Sue and Paul noted that it couldn't have a sprinkler. LaDana said Paul was right. Mike recalled a previous proposal with a structure where the addition of water and sewer put the building into a different category from a storage facility. It became more of a potential living facility. How did that play into this? LaDana said it could potentially be additional living quarters. Under this review, it was reviewed as a dry storage building. She hadn't caught the sprinklers. If it was dry, you couldn't have sprinklers. Sue said they were looking at this as a dry structure. Nothing was submitted other than verbal hearsay through the fire department that there would be water there. If they were to put water there, would it also have a special permit use? LaDana explained it would have to come back for review from Planning and Environmental Health because that wasn't part of this review. This was addressed in the last sentence of #18.

Max Weiss spoke on behalf of his application. He clarified the pronunciation of his name [editors note: vowel sound pronounced like I or eye, not like ee in receive]. He described some history pertaining to the property and slab. The slab was built in 1995. The water supply to the slab was installed by the original slab builder. There was drainage stubbed into the slab by the original slab builder as well. There was an exempt person on the property. It wasn't connected to a sanitary system, nor would it be. The water was solely for the purpose of supplying a dry charge type of sprinkler system, which wouldn't freeze in cold weather. The water stub-in would also serve as a hose bib for irrigation or vehicle wash or whatever.

Max spoke about the background material he submitted, about the history of the property (Exhibit 5, staff report). He said the County was in consultation from August 2005 to March 2006 on this issue. Robert Long represented the County at that time, was fully cognizant of the issue and declined to enforce the zoning at the request of the other party. The other party built the slab, which was the first encroachment. Max said he simply built the slab from his garage. He said the house was encroached because the person who built the house was exempt because he was married to a Tribal woman. Max sought to put the properties back on the tax rolls, correct the issue~~d~~s regarding the property lines, and utilize the existing improvements. The slab was originally 24 feet x 30 feet. He described the resolution as being that he would purchase the improvements of the underground utilities and slab from T Martin on lot 3, and that they would do a mutual offset from the properties, so they would remain two acres in accordance with requirements.

Max said this was done, subsequent to the County's initial involvement in August 2005 through March 2006, in district court. The County was aware and involved, and had correspondence and knowledge of what took place. He believed that the opportunity for the County to review was verbal from Clint Fischer to Robert Long. There was sufficient time between the proposed settlement and the signing of the judge's order, which was made with prejudice, and it was made appurtenant to the properties. He said the County had an opportunity to file an intervener at that time. He said it was a stretch to call it a private agreement. It was a court order.

Max said he applied for a zoning conformance permit in order to avoid disruption of construction of a barn, so there would be no question that he was simply going forward with what was included in the original court order. It didn't work. That was in Nov 2011. To table the application would delay it another year and a half. He couldn't build in inclement weather. The walls and trusses were assembled and would be weather damaged. Based on an informal appraisal, the hardship that would be imposed would be the property value would drop approximated $51,000, plus the costs of litigation, mitigation and diminished future use. The purpose of correcting the errors on the property was to make the property useful in its most logical and best use.

Regarding the view to the east, where it was suggested he move the slab, Max said there wasn't sufficient area. The other issue regarding the slab location was that per aerial photograph he submitted (exhibit 5d in the staff report), the homes in the adjacent area

had outbuildings in approximately the same orientation and distance from the house that he proposed. The 3 feet [setback] should raise an alarm, being unconventional in rural setting. That had to do with a juxtaposition of the property line. He didn't want to compromise the value of Dana Field's neighboring property. He told her when they talked that he hadn't measured. The barn he proposed was 4 feet taller than the attached garage. The photograph that was in there was confusing for a couple of reasons. There seemed to be a house to the east of the site, which was actually about ¼ mile away, across the highway and on the adjacent hill. The photographer was close to the slab. If you went to the center of the lot, where presumably a house would be built, the altitude became less and the top third of the Mission Mountains were visible. He referred to another photograph that represented the portion of the mountains that would remain visible to the south end of the proposed structure (see handout in the June 13, 2012 meeting file). The agreement of the adjacent property owners was in and appurtenant to the deed at the time of purchase, so it was binding on purchasers.

As far as the length of the barn, Max said 30 feet wasn't sufficient for a conventional motor home or for the boat and camper that he possessed. He extended [the slab] 14 feet to the south for this and one other reason. The second reason was that the person who built the original slab cleaned out his concrete truck there, leaving a mound that had to be broken up and hauled off or covered. The 44 feet accommodated the boat and the camper.

Max said there was no sanitary impact because there was no sanitary connection. The flange was in~~s~~ the slab but it was unconnected, and you'd have to dig under the slab to make the connection. There was nothing to connect it to. The septic and drainfield were on the north side, approximately 100 feet from that location. It wouldn't be feasible for a future owner to make that an occupied structure. He had no objection to a stipulation that it couldn't be an occupied structure or have sewer or sanitary connections. That was the intent. The water was there to supply the dry wash for the sprinkler system. He gave details on the sprinkler system.

Max asked for the variances to be granted based on the history of the property and his efforts to correct errors on the two lots, and based on the hardship it would impose had he done the work and litigation to bring the properties back into productivity and then be denied on what he felt was erroneous information. He said the County was fully aware; it was a district court case, apart from the actual communications. Whether or not the court order was binding on the County, he requested the Board consider that it would likely be, if it was adjudicated, simply because it was a matter of public record and the County had prior notice in August 2005.

Max also felt they should grant the variances because it was the only reasonable use of the properties, being long and narrow with their focus principally on Flathead Lake, with also a fine view to the east of the Missions. The grander portion of the Missions would not be affected by this structure. If you looked at a point 3 feet in elevation above the flat plane of lot # 3, in the center of the lot relative to the east-west axes, the top third of the Missions remained visible, as it did over the existing structure. The literal application of

the regulation would have the barn between the residence and the lake. No one would put an out structure between the residence and the lake. It was the dollar view, so placing it in that location would be absurd. The suggestion that it could be placed to the east wasn't feasible financially, and didn't address the issue of the existing buried utilities and water supply to the structure necessary for the fire protection. He said at John Fairchild's inspection, the Chief made his decision based on the presence of sprinklers in the structure for fire suppression and the proximity of the south end of the structure to the private drive and drive to lot 4. John's email was more general. The public health and safety issues as related to sanitation were not existent and those related to fire suppression had been addressed. The remaining issues were the [inaudible] parties with the properties to the best possible and most logical use without incurring unnecessary financial damage. He requested again that the Board grant the variance to build the barn on the existing slab.

Sue asked if the barn was 2 stories. Max replied that it was 1 structure with a gambrel roof, and 8-foot sidewall and a 12-foot truss from the roof. He wanted the most altitude inside the barn with the least altitude outside the barn. Originally he had that sketched at 16 feet, but they discovered the top pitch was too flat for the snow load requirement for that size of structure. It was increased and was 4 feet taller than the existing structure to the north. He continued, pointing out that the property to the west of lot 3 had a house and carport also within the setback given by the zoning regulations. The property to the east of his lot also had a variance to allow an outbuilding within 12 feet of his eastern property line. Those were logical decisions rather than callous disregard by the builders.

Max described the owner of the lot west of lot 3 at the time of building as being an exempt person, as an attorney for the Tribe. The lot that he purchased and the slab he later purchased were also laid out by exempt people. He followed the pattern laid out by them. He found out later that the County disagreed that [the rules] didn't apply. He thought there was a contradiction within the Planning Dept. In his supplementary material for a variance, he read from a May 2009 citation of Dave DeGrandpre saying that the regulations did not apply to lands owned by CS&KT, Tribal members or Tribal Trust lands, from a scoping meeting regarding the Polson Development Code. From his previous conversations with T Martin and [E] Jansen (who previously owned lot 4), they operated under the belief that they were exempt people because they were married to Tribal members who co-owned the properties. He believed if there was a disregard or flagrant violation of the zoning, he believed that [the zoning] didn't apply to those two lots at that time, because of who owned the lots. They weren't trying to skirt the regulations. He wasn't asking for something on the property that didn't exist within a ¼ mile radius, with the exemption of the 3-foot setback.

Mike checked with LaDana that she spoke with the County attorney on this particular court settlement, and there were no records on the County side of this being attended to by the County at that time. LaDana replied that her impression from [the County Attorney] was that this was a dispute between two landowners. The County did not sign the documents, and was not a party to it. Paul double-checked with LaDana that there was nothing on record; there could have been a conversation, but there was nothing in

black and white. LaDana said [the County attorney] read through the case, and that was his impression; he said additional information could be submitted if Max Weiss didn't agree with his interpretation.

Mike gave Max one minute to respond.

Max said in that regard, the Planning Dept requested an interpretation and the person responded who was not a member of the County Attorneys office at the time. Robert Long was the County attorney and was fully aware of it. T Martin requested via the Attorney's office that Lake County enforce the setback against Max. Robert Long declined to do so, based on the first encroachment being by T Martin and based on, via hearsay via his attorney, that they didn't want to open the can of worms that would be raised by a racial discrimination between the application of the zoning regulation. If a reasonable solution could be reached without that becoming a matter of~~r~~ record, they preferred it so that was ~~what~~ done and what the court order reflected. It was a public proceeding. In the regulations, it stated that failure to have knowledge of the regulations was no defense. He said the same applied to the County relative to judicial procedure.

Joel added that there might have been nothing to enforce at that time. You could build a slab in the setback without it being a zoning violation. Paul checked that it was just a slab now. Max said it was a slab, a well house and a house. Paul said that was the first he'd heard of the well house. Max said the well house was adjacent to the slab to the north. The house on lot 4 was in the 30-foot setback as well. Mike asked if the well house was underground. LaDana asked about the size of the well house. Max replied it was 8 feet x 4 feet x 7 feet tall. Mike said that wasn't governed; Joel clarified that it was governed by setbacks, but it wouldn't require a permit. Mike said by the case that was here, it stated that as long as it hadn't been abandoned or removed by the owners. Obviously the slab hadn't been removed; it had been added to. By County's code, if a building or structure had been abandoned for 18 month, how was that considered? LaDana said you could have a slab. Mike specified abandoned structures. Sue added abandoned usage, as opposed to a destroyed structure. She gave an example of a grandfathered commercial use in a residentially zoned area. That use could continue until it ceased to exist for 18 months or longer. Mike said he was trying to get to the point that this didn't really apply here; it was just a piece of concrete on the ground within 3 feet of the property line. Until you put walls up, as interpreted, you had no need for a permit or to conform to setbacks.

Public comment opened:

Chris Field spoke. He asked regarding the recent discussion if the exemption from the Polson Development Code went with Tribal membership or if it went with the land.

Joel replied that it went with the land. LaDana said she couldn't find anything at the Clerk & Recorders Office or in the tract books saying it was ever in Tribal Trust Land. That was the claim. Nothing in the tract book told her that these were Tribal owners. Sue said in that case, it would run with the ownership rather than the land. It wasn't in

Tribal Trust. It was supposedly owned by Tribal interests and that was why they didn't have to conform. Joel explained the land was always in fee status.

Mike believed they would interpret this as if an exemption existed or if a variance were granted to a previous owner, it would be in effect by whoever owned that property unless the condition for the variance was removed. For example, if there was a 3-foot setback for a building, the variance would be over if the building was removed. LaDana reminded the property line had been moved since the original construction. Sue asked if when the house was built, the zoning didn't affect it if it was Tribally owned. Joel said it wasn't Tribal land. Mike asked if it were under Tribal ownership, the court would have stated that. Joel said potentially, but he couldn't say what the court would do. He explained that it was common for Tribal member to own fee land, and that the County asserted regulations on those lands. Sue asked for clarification. Joel explained that the Tribe had jurisdiction over lands owned by the Tribe or Tribal Trust.

Max referred to the 2009 scoping meeting comment by Dave DeGrandpre. LaDana explained that wasn't what was in the regulations; it was a comment at a scoping meeting. Mike observed the scoping meeting was information rather than regulation. LaDana mentioned those regulations were under review. Max asserted that marriage to a Tribal member made the previous owners exempt. Chris F asked when the property was acquired. Max replied that he acquired it in 2005. Chris noted that the regulations were in effect then.

Chris talked about photos pertaining to the blockage of the mountain view. (See relevant handouts in the June 13, 2012 meeting file.) The attempt was made to take them from a central position. He noted there was an effect on the house from the telephoto lens. He asked if the house was completely built when Max acquired it. Max affirmed, except for the garage. Chris said looking at the maps, it appeared to him that the house and attached garage were built on fill that was scraped off lot 3 and [inaudible] lot 4. Max said that was partially correct, plus an additional 88 truckloads of fill hauled in, part on lot 3 and part on lot 4. Chris said Max claimed his view of the lake would be interrupted if he put the barn down on that flat to the east. Max said that wasn't financially feasible. It would be over $50,000 just to get that to bare ground. That was what he was told.

Chris spoke again and asked if the Board had questions that he might be able to answer.

Mike observed that in the report there was a reference to another suitable spot for building on the property for that size of structure that would be in conformance. LaDana answered that when you looked at the site plan, the aerial photos and what was seen at the property, ~~and~~ it seemed like you could move it to the east where the gravel parking area was at present, and potentially it would comply. They didn't plug it in to the plan to see if it would meet the setbacks and other criteria, but it seemed like it potentially could. Max disagreed. Chris said the [inaudible] and the contour map both indicated what looked to be reasonably flat.

Mike checked for other questions. He offered Max a brief time to comment.

Max said he did apply [for zoning conformance] prior to construction. He assembled the walls and trusses, but that didn't require a permit. At the point they became ready to set up the walls, he took a little extra caution to make sure that it was understood about the court order, to avoid a misunderstanding that would result in a cease and desist. It turned out the court order wasn't going to be honored. As far as moving the concrete slab and the buried utilities and everything that was already in place, that was crazy. There was the concrete slab, buried power and communications and transformers. Even if they were to abandon the slab, there was the issue of the water proximity for the sprinkler system. If you assumed you could bury a trench and so on, and not cut across two power easements, then you would put the barn in a way you couldn't get in the barn or the garage. It was foolish.

LaDana passed around photos taken during the site visit. (See variance file for photos.)~~{{}}~~. She pointed out that Environmental Health commented on the application, saying no permit was required if no water and sewer was installed. If they were looking to install water and sewer, it might need some sort of Environmental Health review.

Mike thanked people for their comments.

(Public comment closed.)

Mike returned to the Board for comments.

Paul said the applicant felt through the court order that this was good to go. That was where the problem was. Three feet to the line was extremely close. He didn't think they even did that in town.

Mike noted this was a hard one. The detail in the report was appreciated. There was information there that didn't make sense on the history. The Board had been through a few of those. He was looking for a reason to say yes. With 3 members present, a decision would have to be unanimous for an affirmative vote to grant the variance. Otherwise it would fail. He wouldn't vote for it. He didn't have enough information to make an informed decision on this one. He thought the applicant's best bet was to request that the Board table this, and find additional information and get the County attorneys to come to an agreement on what that court order really meant. If it really did mean a 3-foot setback where the applicant could put a structure of this size there, then he couldn't say no to that request. Max said the order clearly said this. Sue said the order that she read said the slab could stay there with a 3-foot setback, and the well house and the house. That was her interpretation of that: basically what was existing was existing and that was okay. This was not existing. This was something new. Max said it said specifically that the slab could be built upon by one [inaudible]. Sue said she didn't read that in what was submitted in the materials. LaDana described the thickness of the court record.

Sue said she agreed with Mike. She felt 3 feet to a property line with a structure of this stature was out of line. She also felt the staff did an excellent job with the findings of fact. She didn't see where there was that kind of a hardship to keep the setback at 3 feet. It seemed there were other places on the property. If you looked at a 3-foot setback and a slab that was 24 feet in width, then you were almost at 30 feet right there. You could push it over from what these pictures appeared to be. She was having a hard time with that. Under the court order, the applicant believed he had the right to do this, but yet the County attorney said something else according to their packets. She could only look at the information they had here. If there was other information that needed to be submitted, then that would have to be submitted. She would also vote not to approve this at this point, based on the findings of fact, and the information that had been presented to her tonight at this Board. She couldn't tell the applicant what to do or what the County attorneys might do. At this point, the information that was in front of her supported the staff's findings of fact. Mike agreed.

Mike noted they hadn't voted yet. Sue didn't know if it would give Max more time if the Board were to table it, and come back and give them information, or to just end it now and move on to the next page. Max asked if Judge McNeil gave him an advisory opinion, would that help. Sue didn't know. Paul said he would like to see something from the County attorneys/Judge McNeil that this building could be erected 3 feet from the property line. Sue added as well as the height and all that. The Board had quite a few people come and show plans, and the Board gave variances or approved the plans that they had in front of them. The next thing the Board knew, there were living quarters above, and windows in 'storage space'. It just didn't sit right with her to have something that big so close that was never presented at this court determination. That was her position on that.

Max asked if it would assuage her concerns if a stipulation was put in that no domiciliary could be made of that property and make it appurtenant to the deed. Sue explained no, because she didn't think that what was supported here, or that what he was proposing supported what was in the best interest of these properties in the zoning district. She believed that the findings of fact the staff had presented supported the denial of this variance for 3 feet from the property line. Max said there were 4 precedents within ¼ mile. Sue said she wasn't an attorney and wasn't going to get involved in this with the applicant. Right now, she thought they were having Board discussion. They had given an idea to the applicant, and now she was feeling badgered back. Mike closed the meeting to further public discussion, and left this to the Board. Joel asked to make a point, which was at the bottom of page 4 of the staff report. Under the applicable regulations for variances, it said consideration may be tabled for no more than 10 days. If the Board tabled this, they'd probably have to arrange for a special meeting next week. If the applicant withdrew it or requested that it be acted upon later, that would be a different story.

Mike said he wouldn't make a motion to table this. Someone else could. He thought if the County attorney weighed in with a written document and sided with Max Weiss, then he would vote okay. Right now there was too much that supported the staff findings.

For various reasons, many of which Sue stated, he wasn't going to break from those findings and vote otherwise.

Motion made by Mike Marchetti, and seconded by Sue Laverty, to deny the two variance requests, including the staff findings of fact and all pertinent documentation. Motion carried, all in favor.

Max asked about the earlier comment that the vote to approve had to be unanimous. Mike explained this was a 5-member board, and it required a majority of the 5 members [to approve]. If only 3 members were present, it required they be unanimous for approval. Joel added that state law required the concurring vote of 3 members to approve a variance. Max asked if he chose to proceed, since he was $50,000 in, was there an option to reopen this based on further clarification, or did he start over. Mike thought that would be up to the Planning Dept. Joel said if he wanted this board to revisit it, that could be done somehow. There was nothing in state law or the regulations that said you couldn't re-review the same variance request. Some additional review fees would probably be required. It took more staff time and more County resources. Max commented on the fees. Joel said it was so the taxpayers didn't have to pay for him repeatedly requiring the resources. Max said he wouldn't have to do this if they just read the court order. Joel replied that he read the order and didn't agree. LaDana said she also read the order. Max said he hoped to rectify that.

OTHER BUSINESS

None.

Mike Marchetti, chair, adjourned the meeting at 5:32 pm.